respective offerings, (e.g., directory listings and interconnect offerings). While SNET will incur expenses in the provision of these offerings to its own end-users, the end-user of a reseller or a facilities-based CLEC, it is in the latter case that SNET stands to not recover fully the cost of performing the associated tasks. In this proceeding, as well as in Docket No. 95-06-17, SNET filed connection/disconnection cost of service studies. SNET Exhibit VJW-2, Attachment 15. Based on the Department's preliminary review of these studies, it appears that SNET has properly justified differences in charges for reseller customers versus the rates and charges imposed on facilities-based CLEC customers. However, the Department is concerned with the level of contribution provided for in these studies, which will be a subject of the Department's investigation in Docket No. 95-06-17, which has been reopened. Based on the results of the Department's investigation in that proceeding, the Department will adjust the level of contribution for these services accordingly.

Regarding SNET's proposal to impose an NRC for a directory listing, the Department notes that the Stipulation adopted in Docket No. 94-10-02 requires that:

> SNET will not charge the C-LECs to (i) print their customers' primary listings in the white page and yellow page directories; (ii) distribute directory books to their customers; (iii) recycle their customers' directory books; and (iv) maintain the Directory Database.

January 17, 1996, Decision, Docket No. 94-10-02, Attachment A, p.10.

Therefore, consistent with the Stipulation, SNET will be permitted to impose the $25.00 NRC only in those cases when a directory listing is not a primary listing and is not ordered in conjunction with a loop, port, or wholesale local exchange service.

7. Operator Services

MCI proposes the Department order SNET to offer its Directory Assistance Services pursuant to tariff. According to MCI, the Department has ordered SNET to provide all of its unbundled functions and interconnection services pursuant to tariff. MCI Brief, p. 26. The Stipulation requires SNET to include as part of its resale local service tariff, "SNET Directory Assistance and Toll and Assist Operators." January 17, 1996 Decision, Docket No. 94-10-02, Attachment A, 4B, p. 6. As the Stipulation has required SNET to include DA and Operator Services as part of its resale local service tariff, SNET should file with the Department a proposed Directory Assistance and Toll and Assist Operator tariff for the Department's review and approval. In developing its proposed tariff, SNET should follow the new service tariffing procedures outlined in the Decision in Docket No. 94-10-02 and the Stipulation when negotiating a DA/Operator Services tariff with the carriers.

8. Miscellaneous Tariff Provisions

TCG argues that SNET must treat CLECs on a non-discriminatory basis with regard to service interruptions. According to TCG, in its proposed tariff at section

2.12.2 F., SNET will not provide a credit for service interruptions of less than 24 hours. TCG contends that this provision is inconsistent with SNET's Special Access tariffs which provide credit allowances for interruptions of 30 minutes or more. Accordingly TCG recommends that the Department require SNET to revise its tariffs to provide for interruptions to service of 30 minutes or more. TCG January 18, 1996 Comments, pp. 1 and 2; TCG Brief, p. 11.

Section 2.12.2 F. of SNET's proposed tariffs provides credit allowances for its proposed Local Exchange Access Services. Section 2.12.2 F. is further broken down into two subsections, Loop, Port and Wholesale Local Services and Inter-Wire Center Transport Network Interconnection. As proposed, credit allowances will be provided to loop, port and wholesale local service customers for service interruptions of 24 hours or more while inter-wire center transport and network interconnection customers receive credits for service interruptions of 30 minutes or more. Additionally, the General Regulations of SNET's Tariffs provides for credits for service interruptions of 24 hours or more. SNET Tariffs Part I, Sheets 2, 10.

SNET's proposed credit allowances for loop, port and wholesale local service customers are consistent with SNET's current credit allowance policy for its local exchange subscribers. Based on the above, the Department finds that CLECs are not treated in a discriminatory manner, but in the same manner as SNET's local exchange customers. Therefore, TCG's request to direct SNET to revise its credit allowance policy is hereby denied. However, in the event that SNET amends its local exchange credit policy for service interruptions, SNET shall provide credits for service interruptions to its loop, port and wholesale local service customers under same terms and conditions.

TCG argues that SNET's proposed tariff language in Section 18.5.4.1 imposes an unreasonable restriction upon the traffic which could be terminated to SNET via the local interconnection arrangements. Specifically, SNET's tariff proposal would prohibit an end-user from benefiting from various telecommunications service providers and the route diversity currently available in the Connecticut marketplace. TCG January 17, 1996 Comments, pp. 3-6. The Department finds SNET's proposed language to be contrary to the development of a seamless network of networks as envisioned by the Department's Decision in Docket No. 94-07-01. Therefore, SNET should revise its tariff to clarify that CLECs will be permitted to terminate all local calls regardless of whether they were originated from a CLEC's NXX code.

VI. FINDINGS OF FACT

1. Trunk interconnection arrangements, the electronic interface to the E-911 database, Interim SPLNP, NXX administration and the charges associated with a CLEC's inclusion of information in the CSG pages of SNET's directories are noncompetitive functions of SNET's local telecommunications network that are used to provide telecommunications services and are reasonably capable of being tariffed and offered as separate services.

2. The January 17, 1996 Decision in Docket No. 94-10-02 provided that network interconnection trunking not be tariffed as a general offering until such time as a carrier negotiated the first arrangement.

3. The Department does not find that SNET's cost and pricing calculations have provided for a reasonable profit even though SNET's TSLRIC studies make provisions for a return on investment.

4. Pricing services and functions at TSLRIC does not permit SNET to recover all of its costs (i.e., joint and common costs).

5. The 1996 Telcom Act at Section 251 provides States with the ability to set rates for interconnection that are just and reasonable.

6. Interconnection and network element rates must be priced at TSLRIC plus a reasonable contribution, consistent with the 1996 Telcom Act, and previous Department directives.

7. While SNET has submitted improved cost studies over those initially filed in Docket No. 95-06-17, some assumptions used by SNET in calculating the proposed offerings' TSLRIC costs in this proceeding are problematic.

8. Connection with the E-911 database is an essential function to a CLEC because E-911 service is critical to the safety of Connecticut citizens.

9. SNET's proposed rates for E-911 interconnection include a non-recurring charge, a flat monthly charge, a per record update charge and a charge to download the MSAG.

10. SNET's proposed E-911 and 900 Blocking offerings' contributions are set too high.

11. E-911and 900 Blocking are essential functions for which there are currently no alternatives and as such, should not be allowed to recover more than a minimum contribution.

12. For those essential functions that can only be technically provided by SNET, the contribution level should be set to the lowest compensatory level.

13. SPLNP is an interim solution to address the problem of number portability and provides an end-user switching carriers with the ability to retain the same telephone number if that end-user so desires.

14. SNET proposes to provide SPLNP for $4.50 for each number per month, $2.50 per month for each additional path, and a non-recurring charge of $15 for each number ported.

15. The 1996 Telcom Act requires that the permanent LNP solution be technically feasible and be borne by all telecommunications carriers on a competitively neutral basis as determined by the FCC.

16. SNET's proposal to port numbers appears reasonable, and is consistent with the Decision in Docket No. 94-10-02, given the available technology.

17. The FCC has concluded that it should adopt guidelines that the states must follow in mandating cost recovery mechanisms for currently available number portability methods.

18. The FCC has adopted two criteria when seeking interim number portability cost recovery. Specifically, that the adopted cost recovery mechanism be competitively neutral and that the interim number cost recovery mechanism not have a disparate effect on the ability of competing service providers to earn normal returns on their investment.

19. States may require all telecommunications carriers, including incumbent LECs, new LECs, CMRS providers, and IXCs to share the costs incurred in the provision of currently available number portability arrangements.

20. States may apportion the incremental costs of currently available measures among relevant carriers by using competitively neutral allocators, such as gross telecommunications revenues, number of lines, or number of active telephone numbers.

21. An SPLNP cost recovery mechanism based on a carrier's number of active telephone numbers (or lines) relative to the total number of active telephone numbers (or lines) in SNET's service territory is appropriate and would satisfy the FCC's requirement for competitive neutrality.

22. SNET has not satisfactorily explained or provided sufficient justification to support its use of an interstate negotiation expense for its SPLNP non-recurring charge nor has it satisfactorily justified its proposed $15 non-recurring charge.

23. SNET's proposal to flow through access charge revenues to the affected CLECs is acceptable.

24. The January 17, 1996 Decision in Docket No. 94-10-02 required CLECs to only be compensated for those services which they themselves provide. This does not mean that a CLEC or SNET would be compensated for the respective access costs they did not incur.

25. The 1996 Telcom Act requires that a third party NXX administrator be appointed by the FCC.

26. SNET proposes a flat rate of $1,673 per new NXX be imposed for each block of 10,000 numbers purchased by CLECs.

27. SNET has not provided sufficient justification that demonstrates its revised NXX administration expense is only for new numbers.

28. SNET's documentation shows that the BCR costs are for administering NANPA, and not just new telephone numbers.

29. SNET's directory operations are competitive with other forms of advertising.

30. The Department has not received any objections concerning SNET's provision of network interconnection arrangements.

31. SNET is following the directives provided in the January 17, 1996 Decision in Docket No. 94-10-02 regarding the negotiating and tariffing of new services.

32. SNET's proposal to impose interconnect service NRCs on facilities-based CLECs appropriately recognizes the incremental expense that SNET incurs when connecting and disconnecting these carriers' end-users.

33. SNET has appropriately justified the difference in charges for reseller customers versus the rates and charges that would be imposed on facilities-based CLEC customers.

34. The Stipulation adopted as part of the January 17, 1996 Decision in Docket No. 94-10-02 requires SNET to include as part of its resale local service tariff, "SNET Directory Assistance and Toll and Assist Operators."

35. CLECs are not treated on a discriminatory basis relative to credits for service interruptions, but in the same manner as SNET's local exchange customers.

VII. CONCLUSION AND ORDERS

A. CONCLUSION

This proceeding is one of a series of regulatory initiatives that will be necessary to translate the policies, rules and regulations previously established by the Department for use in a multi-provider market. Although the Department has disagreed with certain assumptions used in the calculation of TSLRIC costs, SNET has submitted improved cost studies over those filed in Docket No. 95-06-17. Based on results of the Department's investigation of SNET's revised cost of service studies in the re-opened Docket No. 95-06-17, rates and charges for those services under review in this proceeding may also be subject to change. Any changes to these rates and charges will be addressed.

B. ORDERS

For the following Orders, please submit an original and five copies of the requested material to the Department's Executive Secretary, identified by Docket No., Title and Order Number.

1. No later than July 31, 1996, SNET shall file with the Department revised interconnect service arrangement tariffs with revised rates and charges consistent with this Decision, Section V., supra.

2. No later than August 1, 1996, SNET shall begin offering SPLNP.

3. At such time as SNET is confident that it possesses the necessary information that accurately reflects its current and expect SPLNP cost experience, SNET shall submit to the Department for its review and approval, a proposed SPLNP cost recovery mechanism that satisfies the FCC's criteria outlined in the July 2, 1996 Order and allocates its costs of providing SPLNP based on the number of active telephone numbers (or lines) as of July 1, 1996.

4. No later than August 14, 1996, SNET shall file a proposed Directory Assistance and Operator Services Tariff with the Department.

DOCKET NO. 95-11-08 APPLICATION OF THE SOUTHERN NEW ENGLAND TELEPHONE COMPANY FOR APPROVAL TO OFFER INTERCONNECTION SERVICES AND OTHER RELATED ITEMS ASSOCIATED WITH THE COMPANY'S LOCAL EXCHANGE ACCESS TARIFF

This Decision is adopted by the following Commissioners:

Jack R. Goldberg

Thomas M. Benedict

Reginald J. Smith

CERTIFICATE OF SERVICE

The foregoing is a true and correct copy of the Decision issued by the Department of Public Utility Control, State of Connecticut, and was forwarded by Certified Mail to all parties of record in this proceeding on the date indicated.

Robert J. Murphy
Executive Secretary
Department of Public Utility Control

Date

STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC UTILITY CONTROL

Application of the Southern New England Telephone Company for Approval to Offer Interconnection Services and Other Related Items Associated With the Company's Local Exchange Access Tariff	)	Docket No. 95-11-08
	)	January 30, 1997

BRIEF OF SPRINGWICH CELLULAR LIMITED PARTNERSHIP

Springwich Cellular Limited Partnership ("Springwich"), by its undersigned counsel, hereby submits its Brief in the above-captioned proceeding. For the reasons stated herein, Springwich respectfully urges that the Department reverse the determination in its July 17, 1996 Decision that Commercial Mobile Radio Service ("CMRS") providers must fund interim number portability measures.[1] In its Draft Decision in this proceeding, the Department had concluded, among other things, that CMRS providers are not among those carriers who should contribute to the costs of interim number portability.[2] The Decision's departure from this aspect of the Draft Decision was based on the premise that it was inconsistent with the requirements of a subsequent

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[1] *Application of the Southern New England Telephone Company for Approval to Offer Interconnection Services and Other Related Items Associated With the Company's Local Exchange Access Tariff,* Decision, Docket No. 95-11-08 at 64 (July 17, 1996) ("Decision").

[2] *Application of the Southern New England Telephone Company for Approval to Offer Interconnection Services and Other Related Items Associated With the Company's Local Exchange Access Tariff*, Draft Decision, Docket No. 95-11-08 at 61 (June 18, 1996) ("Draft Decision").

Federal Communications Commission ("FCC" or "Commission") Order[3] implementing the telephone number portability requirements of the 1996 Telecommunications Act.[4] The Decision interprets the FCC Order to require that interim number portability costs be apportioned to every telecommunications service provider in Connecticut, including CMRS providers. Contrary to the Decision, however, the FCC Order does not require such a broad apportionment of interim number portability costs.[5] Indeed, pursuant to the FCC Order, wireless CMRS providers are specifically not required to participate in interim number portability. Moreover, they receive no benefit from implementation of interim number portability by wireline local exchange carriers, and would not be competitively advantaged if not required to contribute to the funding of such landline measures. Accordingly, the Department's Decision is inconsistent with the FCC's stated principle that such costs must be apportioned in a competitively neutral manner.

Read as a whole, the FCC Order reflects a concern that the manner in which number portability obligations are imposed not be permitted to place new telecommunications market entrants at a competitive disadvantage relative to incumbent carriers. With respect to interim measures, the FCC clearly directs that costs be apportioned among *relevant* carriers -- which Springwich submits does not include CMRS providers. As shown below, it was neither

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[3] *In the Matter of Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-116 (July 2, 1996) ("FCC Order").

[4] *See Telecommunications Act of 1996*, Pub. L. No. 104-104, 110 Stat. 56 (1996) (the "1996 Act") *as codified at* 47 U.S.C. §§ 251(b)(2) and 251(e)(1)-(2).

[5] In this Brief, Springwich addresses only the question of whether CMRS providers should be included among the telecommunications carriers to which interim number portability costs should be apportioned. Springwich does not take a position as to the other aspects of the Department's Decision.

Congress' intent, nor does the FCC's interpretation of the 1996 Act require, that *wireless* CMRS providers who are not mandated to provide interim number portability, who do not take advantage of interim number portability arrangements, and who do not presently compete in a market where number portability significantly impacts market competitiveness, should be required to shoulder the costs of *wireline* interim number portability implementation.

DISCUSSION

I. NEITHER THE TELECOMMUNICATIONS ACT OF 1996 NOR THE FCC ORDER IMPLEMENTING NUMBER PORTABILITY REQUIRES CMRS PROVIDERS TO FUND INTERIM MEASURES

1. The FCC's Interpretation of Competitive Neutrality Does Not Require Assessing CMRS Providers a Share of Interim Number Portability Costs

The FCC Order establishes two criteria for a "competitively neutral" cost recovery mechanism, neither of which warrant assessment of interim number portability costs on CMRS providers. First, as noted above, the cost recovery plan "should not give one service provider an appreciable, incremental cost advantage over another service provider when competing for a specific subscriber."[6] The FCC interprets this to mean that costs of interim portability borne by a new entrant may not put that carrier at an appreciable economic disadvantage relative to any other carrier that competes to provide service to the same customer.[7] Second, the chosen cost allocation mechanism "should not have a disparate effect on the ability of competing service

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[6] *FCC Order* at ¶ 132.

[7] *Id.*

providers to earn normal returns on their investment."[8] Put simply, the cost recovery method cannot place a carrier in a better or worse position than its competitors as they compete to serve the same customer. Neither criteria requires the imposition of cost obligations upon CMRS providers who do not participate in interim number portability.

As noted above and indicated in the FCC Order, CMRS providers do not currently compete with wireline providers for basic local service subscribers. Accordingly, failure to impose interim number portability costs on CMRS providers would not give them any competitive advantage *vis-a-vis* wireline basic local service providers, nor would it offer any windfall benefit to CMRS providers, since they do not currently reap any advantage from (nor in fact make any use whatsoever of) interim number portability.

2. Section 251(e)(2) of the 1996 Act and the FCC Order Require Apportionment of Interim Costs on a Competitively Neutral Basis

Section 251(e)(2) of the 1996 Act grants the FCC specific authority to prescribe pricing guidelines that will ensure that the costs of number portability are allocated among telecommunication carriers on a *"competitively neutral basis."*[9] In the context of this provision of the 1996 Act, the FCC has found that "competitive neutrality" means that new entrants to the local market who require number portability to obtain subscribers should not be disadvantaged in competing with incumbent carriers by the particular cost recovery scheme adopted. Throughout the FCC Order, the Commission discusses "competitive neutrality" in terms of new entrants' position *vis-a-vis* incumbent providers. In prescribing cost recovery guidelines, therefore, the

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[8] *FCC Order* at ¶ 135.

[9] *Id.* at ¶ 126 (emphasis added).

FCC asserted the central importance of adopting a method which facilitates a customer's ability to switch between competing carriers:

> Congress mandated the use of number portability so that customers could change carriers with as little difficulty as possible. Our interpretation of 'borne . . . on a competitively neutral basis' reflects the belief that Congress's intent should not be thwarted by a cost recovery mechanism that makes it economically infeasible for some carriers to utilize number portability when competing for customers served by other carriers.[10]

As indicated by the language of the FCC Order, competitive neutrality requires that any cost recovery method for interim number portability "does not affect significantly any carrier's ability to compete with other carriers for customers in the marketplace."[11]

The imposition of interim number portability costs on CMRS providers as proposed by the Department is inconsistent with this principle. CMRS providers currently do *not* compete with wireline local exchange carriers for the same customers. Given the lack of present competition between wireline and wireless carriers, no provider will receive "an appreciable, incremental cost advantage over another service provider when competing for a specific subscriber"[12] if wireless providers are not required to pay for interim portability.

3. Competitive Neutrality Anticipates Reciprocity In Competing Carriers' Interim Number Portability Obligations

The FCC Order specifically states that to assure competitive neutrality an interim number portability mechanism must be reciprocal.[13] In a competitively neutral scenario, "the incumbent

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[10] *FCC Order* at ¶ 131.

[11] *Id.*

[12] *Id.* at ¶ 132.

[13] *Id.* at ¶ 137.

LEC would pay to the new entrant a rate for number portability that was equal to the rate that the new entrant pays to the incumbent LEC."[14] This reciprocity is absent in the case of CMRS providers. Under the Department's Decision, CMRS carriers operating in Connecticut would be required to pay a significant portion of the costs of funding interim number portability in the state, even though they neither request number portability nor receive payment from landline local carriers for providing number portability.

The FCC Order explicitly exempted CMRS providers from interim number portability requirements, even though it acknowledged that some wireless carriers now or in the near future will have the capability to provide some currently available form of number portability. The FCC Order indicates that CMRS providers acknowledged on the record that the two primary interim number portability methods, Remote Call Forwarding ("RCF") and Flexible Direct Inward Dialing ("DID"), are technically possible for some CMRS providers to utilize today, with similar resulting service degradations and technical defects as exist in the wireline context.[15] Nonetheless, the FCC did not require CMRS providers to utilize RCF, DID, or comparable currently available measures to provide interim number portability, finding that "different treatment of wireline carriers in this instance is justified by their differing circumstances."[16] In declining to direct CMRS carriers to provide interim measures, the FCC concluded that to have

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[14] *FCC Order* at ¶ 137.

[15] *Id.* at ¶ 151. The FCC explicitly leaves this decision whether to offer interim number portability up to the provider: "CMRS carriers are, of course, free to provide interim number portability, if they *choose* to do so." *Id.* at ¶ 170 (emphasis added).

[16] *Id.* at ¶ 169.

done so would be counterproductive to industry efforts to develop a long-term solution. "We believe that relieving cellular, broadband PCS, and covered SMR carriers of the burden of providing interim measures will allow them to devote their full resources toward implementing a long-term method and thus enhance their ability to provide long-term portability."[17] Resources which could and should be devoted toward implementing a long-term method would be diminished by providing temporary, technically inefficient measures.[18]

Moreover, unlike in the wireline context, CMRS consumers do not currently view the inability to retain their telephone numbers as an impediment to changing carriers, and the lack of number portability is therefore not currently an impediment to competition among *wireless* carriers.[19] In fact, while supporting the imposition of *long-term* number portability requirements on wireline and wireless carriers alike, new CMRS entrants consistently took the position before the FCC that it need not and should not impose *interim* measures on CMRS providers (both new and incumbent).[20]

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[17] *FCC Order* at ¶ 170.

[18] As prescribed by the FCC Order, CMRS carriers must have the capability of delivering calls from their networks to ported numbers throughout the country by December 31, 1998, the date when wireline providers must complete implementation of number portability in the largest 100 metropolitan statistical areas. Wireless providers are not required to offer service provider portability until June 30, 1999, however -- six months after the deadline for wireline carriers. *Id.* at ¶ 165.

[19] *Id.* at ¶ 146. CMRS customers place less value on maintaining the same telephone number, choosing not to distribute or publish the numbers and often not making them available through directory assistance.

[20] *See, e.g.,* Exhibit 1 to *Prefiled Testimony of David M. Mangini* (filed Jan. 7, 1997), *Ex Parte Comments* of the Personal Communications Industry Association, filed with the Federal Communications Commission in CC Docket No. 95-116 (March 12, 1996), and

(continued...)

Since the cost to implement and service degradation impact of currently available interim number portability measures are not outweighed by any competitive need to implement them in the wireless context, it is extremely unlikely that the wireless industry or any wireless carrier(s) will choose to deflect efforts or resources engaged in developing permanent number portability in order to offer interim measures. The Department's cost allocation plan set forth in the Decision, on the other hand, advances a methodology in which CMRS carriers would be required to *fund* interim number portability obligations, but conversely will not extract any benefits. Accordingly, Springwich submits that a requirement that CMRS carriers fund interim obligations fails to meet the "competitively neutral" standard required by the 1996 Act.

II. THE FCC ORDER DOES NOT REQUIRE CMRS PROVIDERS TO BEAR THE COSTS OF INTERIM NUMBER PORTABILITY

In its Decision, the Department states that the FCC Order *requires* it to recover interim number portability costs from "all telecommunications carriers" in the state.[21/] The FCC, however, noted that the statute provides for the costs of number portability to be borne by "all telecommunications carriers on a competitively neutral basis" and that the Commission could depart from the general rule that costs must be borne by cost causers only if "necessary to adopt a 'competitively neutral' standard because number portability is a network function that is required

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[20/](...continued)
Comments and *Reply Comments* of Nextel Communications, Inc. filed with the FCC in Docket No. 95-116 on Sept. 12, 1995 and Oct. 12, 1995, respectively.

[21/] *Decision* at 64.

for a carrier to compete with the carrier that is already serving a customer."[22] As a result of this mandate, the Commission spent considerable effort to define the principle of "competitive neutrality" under which a state could "apportion the incremental costs of currently available measures [*i.e.* interim number portability] among *relevant* carriers by using competitively neutral allocators . . . ."[23]

The FCC Order therefore clearly qualifies the phrase "all telecommunications providers" by directing that the costs of currently available portability measures be imposed "among *relevant carriers* by using competitively neutral allocators"[24] and thereby permits the apportionment of interim number portability costs on non-cost causers only where necessary to preserve "competitive neutrality." Clearly, as discussed above, CMRS providers are not "cost causers" of interim number portability when they have not requested and do not make use of the service. And, likewise in the case of CMRS, the interest of competitive neutrality does not override the general rule that costs should not be assessed on non-cost causers since, unlike in the wireline market, in the CMRS market interim number portability is not a "network function that is required for a [wireless] carrier to compete with a carrier already serving a customer," nor would CMRS providers gain any unfair competitive advantages if interim number portability costs are not assessed on them. Accordingly, since CMRS would not reap any competitive advantage, there is no basis to depart from the general cost causation rules by imposing interim

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[22] *FCC Order* at ¶ 131.

[23] *Id.* at ¶ 130 (emphasis added).

[24] *Id.* at ¶ 131.

number portability costs on CMRS providers. Service providers which are not required by the FCC to provide interim number portability, and which do not take advantage of number portability offered by other service providers are, therefore, simply not "relevant carriers."

Moreover, the Department's reading of the FCC Order as requiring CMRS providers to contribute to interim number portability funding does not comport with the Order's specific endorsement of cost recovery plans which do *not* assess CMRS providers for interim costs. The FCC Order cites as compliant a plan in effect in Rochester, New York, also adopted by the New York Department of Public Service for the New York metropolitan area, which allocates costs of interim number portability measures through an annual surcharge assessed by the incumbent LEC from which the number is transferred. The Order also approves a mechanism which requires each carrier to pay for its own costs of currently available number portability measures.[25/] CMRS providers are not required to contribute under either of these plans which are specifically cited by the FCC Order as competitively neutral. Accordingly, a cost recovery mechanism which does not assess wireless carriers is fully consistent with the FCC's directive that states recover interim number portability costs from "all telecommunications carriers on a competitively neutral basis."

[25/] *FCC Order* at ¶ 136.

III. REQUIRING CMRS PROVIDERS TO CONTRIBUTE TO INTERIM FUNDING OBLIGATIONS CONTRAVENES THE 1996 ACT AND THE FCC ORDER IMPLEMENTING NUMBER PORTABILITY

The interim cost recovery plan prescribed by the Department is not competitively neutral as applied to CMRS providers and, therefore, violates the 1996 Act and the FCC Order. In implementing the competitive neutrality requirement of Section 251(e)(2), the FCC directed that "the cost of number portability borne by each carrier [may] not affect significantly any carrier's ability to compete with other carriers for customers in the marketplace."[26/] However, requiring CMRS providers to fund number portability measures during this interim period when they do not benefit from number portability would have a "disparate effect" on their ability to earn normal returns on their investment. Specifically, to require wireless carriers to pay for interim number portability would in effect act as a subsidy of the costs of existing and new wireline carriers. This would serve to divert resources of new and existing CMRS carriers from developing and implementing long-term number portability solutions in the wireless marketplace.

26/ *FCC Order* at ¶ 131.

CONCLUSION

For the foregoing reasons, and in keeping with the intent of Congress and the FCC Order, Springwich urges the Department to refrain from imposing interim number portability funding obligations on CMRS providers.

Respectfully submitted,

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January 29, 1997

180642.1

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 29th day of January, 1997: 1) an original and twenty (22) copies of the foregoing Brief of Springwich Cellular Limited Partnership was sent via Federal Express to Robert J. Murphy, Executive Secretary, Department of Public Utility Control, One Central Park Plaza, New Britain, Connecticut 06051, 2) two (2) copies of the foregoing Brief was sent via overnight delivery to the Office of Consumer Counsel, 136 Main Street, Suite 501, New Britain, Connecticut 06051, and 3) one (1) copy the Brief was sent, via first class mail, to each of the parties on the attached Service List.

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